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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,224	01/26/2004	Byoung-Woo Cho	1781.1001	6552

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EXAMINER

HANEY, RICHAE LEE

ART UNIT PAPER NUMBER

3765

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/763,224

Applicant(s)

CHO, BYOUNG-WOO

Examiner

Richale L. Haney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/21/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment of 11/21/2005 has been received. The previously cited objections to the drawings and the specification have been alleviated. The 112 rejection has been removed. Claims 4 and 5 have been amended. Claim 14 has been added. No claims were cancelled, claims 1 –14 are pending in the application.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 - 5, 11,12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Whang (6,199,213). Whang discloses a hat comprised of bias cut woven panels made from non-stretchable cotton fibers, (Column 3, lines 5-12) which have the ability to stretch. A sweatband is attached by flexible stitch (Column 4, line 44) to lower peripheral edge (Figure 3, 29, 26, 23) and acts as the head-receiving portion (Figure 3). It is noted that all yarns made from natural fibers, such as cotton (Column 3, line 32) inherently spun (i.e. twisted) and therefore both the weft and the warp yarns are formed from high twist yarns. In regard to fabric and the ability to stretch, stated in Steven

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Warner's text "Fiber Science" is Hooke's Law, which teaches that all materials have the ability to stretch and recover (page 136-138).

3. Claims 1, 6 - 9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgs (WO 01/05259). Higgs discloses a cap made from stretchable fabric with twisted yarns and a knit sweatband comprising twisted yarns, partially covering the foam core attached to the lower peripheral edge (Figure 4, 22 and Figure 3, 12). The sweatband is composed of a second stretch fabric including elastic (Page 1, line 28). The body of the crown includes shape tape (Figure 1, 9) attached along the lower peripheral edge of the cap. It is noted by the examiner that the fiber composition of Higgs is cotton. It is known in the art that staple fibers such as cotton require twisting in order to form the yarn from which the fabric is created.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Nebeker (5,566,395). Higgs discloses all of the claimed invention except for the particular type of foam core found in the band of the invention. Nebeker teaches a urethane foam used as the core for a sweatband (Column 1, lines 54-56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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modify Higgs by using a polyurethane (a type of urethane) foam as taught by Nebeker in order to draw moisture away from the hat (Column 2, lines 23-24).

6. 12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Whang. Higgs discloses all of the claimed invention except for the band core and the second stretchable fabric being joined by elastic yarn. Whang teaches the fabric and the band core being joined by elastic thread (Column 4, line 44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Higgs by attaching the band core and the fabric by means of elastic thread as taught by Whang in order to provide a flexibility that is capable of fitting various head sizes (Column 4, lines 28 –31).

### ***Response to Arguments***

7. Applicant's arguments filed 11/21/2005 have been fully considered but they are not persuasive.

Applicant submits that the examiner is relying on the disclosure of inelastic material to include the use of any inelastic material. The device of Whang teaches an inelastic material comprised of cotton fibers. The examiner is relying on the understanding that staple yarns, such as cotton, are inherently created by a spinning process. The claim language only requires that "a first stretchable fabric be comprised of high twist yarns." When interpreted in the broadest reasonable sense, the device of Whang, meets the limitations recited by the applicant. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is

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noted that the features upon which applicant relies (i.e., 800 turns per inch) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The inclusion of Hooke's law was intended to provide to additional support as to the fact that the material of Whang has the ability to stretch and recover. It is further noted that the claim language does not require any specific amount of elasticity. The reference is not used to anticipate the use of high twist yarns, rather is cited to reiterate the stretchability of the fabric.

The applicant submits that Higgs also does not teach a high twist yarn. Similar to the device of Whang, Higgs teaches a cotton terry toweling. As stated in the above response, staple fibers are inherently spun to form yarns and therefore the device of Higgs interpreted in the broadest reasonable sense meets the limitation recited by the applicant.

8. In response to applicant's argument that the combination of Higgs and Whang is improper because the references teach against each other since devices have different end goals. The combination relied upon by the examiner is used to teach that a band core attached by an elastic yarn to combine two pieces is known in the art. The end use of the devices is irrelevant. The device of Higgs has a sweatband attached to the crown of the cap, but is lacking a band core and elasticized thread. The device of Whang shows that a band core attached with elasticized thread is known. The combination of references is appropriate.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

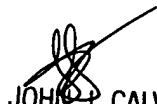
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
February 21, 2006

RLH

  
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